

Appl. No. 10/639,928  
Amdt. dated April 27, 2005  
Reply to Office action of February 7, 2005

Docket No. 59552-010400

### **RESPONSE TO EXAMINER'S REJECTIONS**

Responsive to the Office Action mailed February 7, 2005 Applicant thanks the Examiner for her guidance and recognition that Claims 20-28 are allowed. In the present response, Applicant has amended Claim 1 and Claim 20. Furthermore, the Applicant has added Claim 29. No new matter has been added.

#### **Claim Objections**

The Examiner has objected to Claim 1 due to informalities. Per the Examiner's suggestion, Applicant has replaced "an" with "a" and replaced the word "text" with the word "scale" to provide antecedent basis.

Furthermore, the Examiner has objected to Claims 4-6 and 16 as being improper dependent form for failing to further limit subject matter of a previous claim. Applicant has amended Claim 1 to read "historical rate of spread scale and at least one real time rate of spread scale" so that Claims 4-6 and 16 are in proper dependent form.

Therefore, it is respectfully submitted that all of the Examiner's objections have been overcome. Applicant respectfully requests that these objections be withdrawn and Claims 1, 4-6, and 16 be allowed.

#### **Claim Rejections under 35 U.S.C. § 103(a)**

The Examiner has rejected Claims 1-28 under §103(a) as being unpatentable over Ganivet (U.S. 6,658,746). Examiner asserts that Ganivet discloses all the elements of independent Claims 1 and 20 except that Ganivet fails to disclose the specific use of the tool and the limitations of Claims 4-6, and the specific shaped and dimensions of the tool. However, Ganivet does not teach all the elements of the newly amended independent Claims 1 and 20. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also, MPEP 2143.03. Specifically, the Ganivet reference does not teach a tool having a historical rate of spread scale as recited in Claims 1 and 20. This element is disclosed in both Claims 1 and

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20. Furthermore, the present disclosure supports a tool having an historical rate of spread scale, which is based upon previous large scale brushfires. Ganivet simply fails to disclose a scale on a tool which is based on the rate of spread of previous large scale brushfires. Instead, Ganivet discloses a distance scale in kilometers and nautical miles, angular markings corresponding to degrees of a compass rose, speed in knots. These are not items based on past, historical events that can be used to evaluate a present situation. Because Ganivet fails to disclose the element found in newly amended independent Claims 1 and 20, it cannot render obvious these claims or their corresponding dependent Claims 2-19 and 21-28. Furthermore, the remaining Examiner's rejections, which rely on Ganivet are moot for the same reasons. Therefore, Applicant respectfully requests that the Examiner also withdraw these rejections as to Claims 1-28.

Moreover, the Examiner states that the specific shape of the tool, a triangular shape, is considered an obvious modification of the shape of the tool disclosed by Ganivet. The triangle shape is found in Claim 2 and 29. The Examiner reasons that changes in shape, configuration, without any criticality, is within the level of skill in the art. The Examiner further states that it would have been obvious to choose a triangular shape in order to provide a triangular tip to easily grasp the tool.

The Applicant respectfully disagrees with the Examiner. First, the triangular shape of the tool is not chosen so that the user can easily grip the tool. The triangular shape was specifically selected because the triangle shape is used to frame brushfires on a map and the triangle shape is compatible with theoretical elliptical shape fire spread models (see Applicant's specification at paragraph [0030]). Thus, the triangle shape is more than an obvious modification, it has a specific mechanical function and purpose. MPEP 2144.04 states: "*In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) The court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.) In the present case, the triangular shape has a specific, mechanical function and thus cannot be considered obvious.

Second, the triangle shape is further provides distinct product from the Ganivet tool. Even if the Ganivet tool was shaped in a triangle, it would not be able to function to project the rate of spread of brushfires. Again, MPEP 2144.04 states: "*Ex parte Hilton*, 148 USPQ 356 (Bd. App. 1965) (While recognizing that in some cases the particular shape of a product is of no

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patentable significance, the Board held in this case the shape is important because it results in a product which is distinct from the reference product."

Therefore, the triangular shape is not merely aesthetic or ornamental and cannot be considered obvious in light of Ganivet.

#### REMARKS

No fee is believed to be due with this Response and Amendment. However, if Applicant is mistaken, authorization is hereby given to charge any additional fees or credit overpayment to Deposit Account No. 50-2638. Please reference Attorney Docket Number 59552-010400 when charging any payments or credits in connection with this application. If the Examiner has any questions, Applicant requests that the Examiner contact Applicant's undersigned attorney at (310) 586-7770.

Respectfully submitted,  
GREENBERG TRAURIG, LLP

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By Eydia Nair Flores  
E. Nair Flores  
Reg. No. 54,103

Customer Number 33717  
GREENBERG TRAURIG, LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, CA 90404  
Phone: (310) 586-6511  
Fax: (310) 586-0511  
E-mail: floresn@gtlaw.com